

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 001080

SIPDIS

NSC FOR TSHANNON AND CBARTON
USCINSO ALSO FOR POLAD
STATE PASS USAID FOR DCHA/OTI

E.O. 12958: DECL: 03/29/2014

TAGS: [PGOV](#) [PHUM](#) [KDEM](#) [VE](#)

SUBJECT: CHAVISTAS LAND PUNCH IN SUPREME COURT BOXING MATCH

REF: CARACAS 00923 AND PREVIOUS

CLASSIFIED BY: POLITICAL COUNSELOR ABELARDO A. ARIAS FOR REASON 1.4(D)

SUMMARY:

1. (C) THE SUPREME COURT (TSJ) CONSTITUTIONAL CHAMBER MARCH 23 NULLIFIED THE TSJ ELECTORAL CHAMBER'S MARCH 15 DECISION ORDERING THE NATIONAL ELECTORAL COUNCIL (CNE) TO INCLUDE OVER 870,000 DISPUTED SIGNATURES, GIVING THE OPPOSITION ENOUGH FOR A REFERENDUM. D'LSA SOLORZANO, DEMOCRATIC COORDINATING COMMITTEE (DCC) CHIEF LEGAL REPRESENTATIVE, TOLD POLOFF MARCH 23 THAT THE CONSTITUTIONAL CHAMBER ILLEGALLY OVERSTEPPED ITS BOUNDS. CONSTITUTIONAL SCHOLARS AND PROMINENT JURISTS HAVE ALSO CRITICIZED THE CONSTITUTIONAL CHAMBER'S RULING, AS WELL AS THE ROLE OF THE TSJ PRESIDENT IN THE MATTER. PRESIDENT CHAVEZ HAILED THE DECISION AS HAVING SAVED HIM FROM A COUP D'ETAT AND CAPTURE. THE OPPOSITION'S CHANCES OF GETTING A REFERENDUM DECLARED THROUGH THE TSJ APPEAR TO BE MORTALLY WOUNDED, ALTHOUGH THE CASE MAY CONTINUE TO THRASH IN THE COURT'S WEB OF INTERNAL PROCEDURES FOR SOME TIME. END SUMMARY.

CONSTITUTIONAL CHAMBER REPEATS ITS BAD NEWS

2. (U) THE CONSTITUTIONAL CHAMBER OF VENEZUELA'S SUPREME COURT (TSJ) STRUCK BACK MARCH 23, ISSUING A DECISION NULLIFYING THE MARCH 15 DECISION OF THE TSJ ELECTORAL CHAMBER, AND ORDERING THE NATIONAL ELECTORAL COUNCIL (CNE) TO CONTINUE TO HANDLE ALL QUESTIONS AND PROCEDURES CONCERNING THE VERIFICATIONS OF SIGNATURES GATHERED FOR A PRESIDENTIAL RECALL REFERENDUM. THE CONSTITUTIONAL CHAMBER'S DECISION IS THE LATEST IN A SERIES OF COMPETING PRONOUNCEMENTS COMING FROM THE RIVAL TSJ CHAMBERS SINCE THE ELECTORAL CHAMBER'S ORDERED THE CNE MARCH 15 TO INCLUDE OVER 870,000 SIGNATURES IN THE COUNT TOWARDS A REFERENDUM (SEE REFTELS). THE ELECTORAL CHAMBER, CONSTITUTIONAL SCHOLARS, AND OPPOSITION CRITICS HAD ASSAILED EARLIER CONSTITUTIONAL CHAMBER PRONOUNCEMENTS IN THE CASE BECAUSE OF IRREGULARITIES IN THE DECISION-MAKING. IVAN RINCON, PRESIDENT OF THE CONSTITUTIONAL CHAMBER AND THE TSJ, ANNOUNCED THE COURT'S MARCH 23 DECISION FROM THE COURTROOM WITH HIS THREE JUDGE MAJORITY AND TWO REPLACEMENT JUDGES STANDING BY.

OPPOSITION BEMOANS JUDICIAL BARBARISM

3. (C) D'LSA SOLORZANO, CHIEF LEGAL REPRESENTATIVE OF THE DEMOCRATIC COORDINATING COMMITTEE (DCC), TOLD POLOFF MARCH 23 THAT THE CONSTITUTIONAL CHAMBER'S DECISION WAS A "BARBARISM OF JUSTICE." SOLORZANO SAID RINCON INCORRECTLY RELIED ON ARTICLE 136 OF THE CONSTITUTION, WHICH GRANTS THE CONSTITUTIONAL CHAMBER POWER TO OVERRULE SUBORDINATE COURTS ON CONSTITUTIONAL ISSUES. SOLORZANO ASSERTED THAT THE ELECTORAL CHAMBER WAS A CO-EQUAL TSJ CHAMBER AND NOT A SUBORDINATE COURT. SHE ARGUED, THEREFORE, THAT THE CONSTITUTIONAL CHAMBER'S DECISION ILLEGALLY OVERSTEPPED ITS BOUNDS.

CHAVEZ, GOV HAIL DECISION AGAINST "COUP D'ETAT"

. (U) GOV REPRESENTATIVES FOCUSED ON THE RESULT RAHER THAN ON THE LEGAL UNDERPINNINGS OF THE CONSTTUTIONAL CHAMBER'S DECISION. IN A BROADCAST CARIED ON ALL MEDIA OUTLETS IN THE COUNTRY BY GOV MADATE (CADENA) ON MARCH 24, PRESIDENT HUGO CHAVEZSAID THE CONSTITUTIONAL CHAMBER DECISION STYMIED PANS OF "THE COUNTERREVOLUTIONARY OLIGARCHY" TO OERTHROW HIS GOVERNMENT. CHAVEZ SAID THE DECISIO, WHICH HE BELIEVES WILL BLOCK THE REFERENDUM, MENT THAT THERE WOULD BE "NO COUP D'ETAT AND NO TAING HUGO CHAVEZ PRISONER," AND PROMISED THAT THEGOV WILL NOT SIT BY WHILE THE "IMMORAL AND UNETHICL" OLIGARCHY CONSPIRED AGAINST HIM.

CARACAS 00001080 001.2 OF 002

1. (C) THE SUPREME COURT (TSJ) CONSTITUTIONAL CHAMBER MARCH 23 NULLIFIED THE TSJ ELECTORAL CHAMBER'S MARCH 15 DECISION ORDERING THE NATIONAL ELECTORAL COUNCIL (CNE) TO INCLUDE OVER 870,000 DISPUTED SIGNATURES, GIVING THE OPPOSITION ENOUGH FOR A REFERENDUM. D'LSA SOLORZANO, DEMOCRATIC COORDINATING COMMITTEE (DCC) CHIEF LEGAL REPRESENTATIVE, TOLD POLOFF MARCH 23 THAT THE CONSTITUTIONAL CHAMBER ILLEGALLY OVERSTEPPED ITS BOUNDS. CONSTITUTIONAL SCHOLARS AND PROMINENT JURISTS HAVE ALSO CRITICIZED THE CONSTITUTIONAL CHAMBER'S RULING, AS WELL AS THE ROLE OF THE TSJ PRESIDENT IN THE MATTER. PRESIDENT CHAVEZ HAILED THE DECISION AS HAVING SAVED HIM FROM A COUP D'ETAT AND CAPTURE. THE OPPOSITION'S CHANCES OF GETTING A REFERENDUM DECLARED THROUGH THE TSJ APPEAR TO BE MORTALLY WOUNDED, ALTHOUGH THE CASE MAY CONTINUE TO THRASH IN THE COURT'S WEB OF INTERNAL PROCEDURES FOR SOME TIME. END SUMMARY.

CONSTITUTIONAL CHAMBER REPEATS ITS BAD NEWS

12. (U) THE CONSTITUTIONAL CHAMBER OF VENEZUELA'S SUPREME COURT (TSJ) STRUCK BACK MARCH 23, ISSUING A DECISION NULLIFYING THE MARCH 15 DECISION OF THE TSJ ELECTORAL CHAMBER, AND ORDERING THE NATIONAL ELECTORAL COUNCIL (CNE) TO CONTINUE TO HANDLE ALL QUESTIONS AND PROCEDURES CONCERNING THE VERIFICATIONS OF SIGNATURES GATHERED FOR A PRESIDENTIAL RECALL REFERENDUM. THE CONSTITUTIONAL CHAMBER'S DECISION IS THE LATEST IN A SERIES OF COMPETING PRONOUNCEMENTS COMING FROM THE RIVAL TSJ CHAMBERS SINCE THE ELECTORAL CHAMBER'S ORDERED THE CNE MARCH 15 TO INCLUDE OVER 870,000 SIGNATURES IN THE COUNT TOWARDS A REFERENDUM (SEE REFTELS). THE ELECTORAL CHAMBER, CONSTITUTIONAL SCHOLARS, AND OPPOSITION CRITICS HAD ASSAILED EARLIER CONSTITUTIONAL CHAMBER PRONOUNCEMENTS IN THE CASE BECAUSE OF IRREGULARITIES IN THE DECISION-MAKING. IVAN RINCON, PRESIDENT OF THE CONSTITUTIONAL CHAMBER AND THE TSJ, ANNOUNCED THE COURT'S MARCH 23 DECISION FROM THE COURTROOM WITH HIS THREE JUDGE MAJORITY AND TWO REPLACEMENT JUDGES STANDING BY.

OPPOSITION BEMOANS JUDICIAL BARBARISM

13. (C) D'LSA SOLORZANO, CHIEF LEGAL REPRESENTATIVE OF THE DEMOCRATIC COORDINATING COMMITTEE (DCC), TOLD POLOFF MARCH 23 THAT THE CONSTITUTIONAL CHAMBER'S DECISION WAS A "BARBARISM OF JUSTICE." SOLORZANO SAID RINCON INCORRECTLY RELIED ON ARTICLE 136 OF THE CONSTITUTION, WHICH GRANTS THE CONSTITUTIONAL CHAMBER POWER TO OVERRULE SUBORDINATE COURTS ON CONSTITUTIONAL ISSUES. SOLORZANO ASSERTED THAT THE ELECTORAL CHAMBER WAS A CO-EQUAL TSJ CHAMBER AND NOT A SUBORDINATE COURT. SHE ARGUED, THEREFORE, THAT THE CONSTITUTIONAL CHAMBER'S DECISION ILLEGALLY OVERSTEPPED ITS BOUNDS.

CHAVEZ, GOV HAIL DECISION AGAINST "COUP D'ETAT"

14. (U) GOV REPRESENTATIVES FOCUSED ON THE RESULT RAHER THAN ON THE LEGAL UNDERPINNINGS OF THE CONSTTUTIONAL CHAMBER'S DECISION. IN A BROADCAST CARIED ON ALL MEDIA OUTLETS IN THE COUNTRY BY GOV MADATE (CADENA) ON MARCH 24, PRESIDENT HUGO CHAVEZ SAID THE CONSTITUTIONAL CHAMBER DECISION STYMIED PANS OF "THE COUNTERREVOLUTIONARY OLIGARCHY" TO OERTHROW HIS GOVERNMENT. CHAVEZ SAID THE DECISIO, WHICH HE BELIEVES WILL BLOCK THE REFERENDUM, MENT THAT THERE WOULD BE "NO COUP D'ETAT AND NO TAING HUGO CHAVEZ PRISONER," AND PROMISED THAT THEGOV WILL NOT SIT BY WHILE THE "IMMORAL AND UNETHICL" OLIGARCHY CONSPIRED AGAINST HIM.

CARACAS 00001080 002.1 OF 002

ELTA AMAURO STATE, HAILED THE CONSTITUTIONAL CHAMBER DECSION, SAYING IT REESTABLISHED THE AUTONOMY OF TH ELECTORAL POWER IN THE CNE. A RECALL REFERENDU, HE SAID, NOW DEPENDS ON THE SIGNATURE APPEALS POCESS ESTABLISHED BY THE CNE. CNE DIRECTOR JORGERODRIGUEZ SAID MARCH 24 THAT THE CNE WAS MAKING O OFFICIAL ANNOUNCEMENT REGARDING THE COURT DECISIN. NEVERTHELESS, RODRIGUEZ SAID THE CNE AND THEOPPOSITION WOULD MEET MARCH 25 TO CONTINUE DISCUSSION ON THE TERMS OF A SIGNATURE APPEALS PROCESS.

COMMENT:

16. (C) THE OPOSITION'S CHANCES OF GETTING A REFERENDUM DECLARD THROUGH THE TSJ APPEAR TO BE MORTALLY WOUNDED, ALTHOUGH THE CASE MAY CONTINUE TO THRASH IN THE COUT'S WEB OF INTERNAL PROCEDURES FOR SOME TIME. CNSTITUTIONAL SCHOLARS NOTE THERE IS LITTLE PRECENT FOR RESOLVING

INTRA-COURT COURT CRISES SINCE THE NEW CONSTITUTION WAS ADOPTED IN 1999. ONE MODEL SUGGESTS THE TSJ'S POLITICAL-ADMINISTRATIVE CHAMBER, WHICH RULES ON JURISDICTIONAL QUESTIONS FOR LOWER COURTS, COULD ENTER THE FRAY TO OFFER AN ADDITIONAL OPINION ON WHICH CHAMBER CAN RULE ON NE MATTERS.

18. (C) JUSTICE IVAN RINCON IS A PARTICULARLY POWERFUL FOE OF THE REFERENDUM BECAUSE HE SERVES NOT ONLY AS THE CONSTITUTIONAL CHAMBER PRESIDENT, BUT ALSO AS THE PRESIDENT OF THE ENTIRE SUPREME COURT, WIELDING SPECIAL ADMINISTRATIVE POWER TO CALL CASES BEFORE THE ENTIRE COURT EN BANC. HIS IDEOLOGICAL STANCE ON THE CNE CASE MAKE THE CHANCES THAT HE MIGHT DECIDE TO CALL HIS OWN MARCH 23 DECISION FOR REVIEW EXTREMELY REMOTE. TO OVERRULE RINCON AND GET THE CASE REVIEWED BY THE ENTIRE COURT, THE OPPOSITION WOULD NEED A TWO-THIRDS MAJORITY, OR FOURTEEN JUDGES, TO SO VOTE, WHILE THE MOST OPTIMISTIC OPPOSITION COURT WATCHERS COUNT ONLY ELEVEN VOTES. IF THE CASE GOES TO THE WHOLE COURT EN BANC, RINCON'S CONSTITUTIONAL CHAMBER COULD DECIDE ON THE INTERNAL PROCEDURES FOR VOTES AND RECUSALS. IN SHORT, A PRO-REFERENDUM DECISION FROM THE COURT IS UNLIKELY.

SHAPIRO

CARACAS 00001080 002.2 OF 002

ELTA AMACURO STATE, HAILED THE CONSTITUTIONAL CHAMBER DECISION, SAYING IT REESTABLISHED THE AUTONOMY OF THE ELECTORAL POWER IN THE CNE. A RECALL REFERENDUM, HE SAID, NOW DEPENDS ON THE SIGNATURE APPEALS PROCESS ESTABLISHED BY THE CNE. CNE DIRECTOR JORGE RODRIGUEZ SAID MARCH 24 THAT THE CNE WAS MAKING NO OFFICIAL ANNOUNCEMENT REGARDING THE COURT DECISION. NEVERTHELESS, RODRIGUEZ SAID THE CNE AND THE OPPOSITION WOULD MEET MARCH 25 TO CONTINUE DISCUSSION ON THE TERMS OF A SIGNATURE APPEALS PROCESS.

COMMENT:

16. (C) THE OPPOSITION'S CHANCES OF GETTING A REFERENDUM DECLARED THROUGH THE TSJ APPEAR TO BE MORTALLY WOUNDED, ALTHOUGH THE CASE MAY CONTINUE TO THRASH IN THE COURT'S WEB OF INTERNAL PROCEDURES FOR SOME TIME. CONSTITUTIONAL SCHOLARS NOTE THERE IS LITTLE PRECEDENT FOR RESOLVING INTRA-COURT COURT CRISES SINCE THE NEW CONSTITUTION WAS ADOPTED IN 1999. ONE MODEL SUGGESTS THE TSJ'S POLITICAL-ADMINISTRATIVE CHAMBER, WHICH RULES ON JURISDICTIONAL QUESTIONS FOR LOWER COURTS, COULD ENTER THE FRAY TO OFFER AN ADDITIONAL OPINION ON WHICH CHAMBER CAN RULE ON CNE MATTERS.

17. (C) JUSTICE IVAN RINCON IS A PARTICULARLY POWERFUL FOE OF THE REFERENDUM BECAUSE HE SERVES NOT ONLY AS THE CONSTITUTIONAL CHAMBER PRESIDENT, BUT ALSO AS THE PRESIDENT OF THE ENTIRE SUPREME COURT, WIELDING SPECIAL ADMINISTRATIVE POWER TO CALL CASES BEFORE THE ENTIRE COURT EN BANC. HIS IDEOLOGICAL STANCE ON THE CNE CASE MAKE THE CHANCES THAT HE MIGHT DECIDE TO CALL HIS OWN MARCH 23 DECISION FOR REVIEW EXTREMELY REMOTE. TO OVERRULE RINCON AND GET THE CASE REVIEWED BY THE ENTIRE COURT, THE OPPOSITION WOULD NEED A TWO-THIRDS MAJORITY, OR FOURTEEN JUDGES, TO SO VOTE, WHILE THE MOST OPTIMISTIC OPPOSITION COURT WATCHERS COUNT ONLY ELEVEN VOTES. IF THE CASE GOES TO THE WHOLE COURT EN BANC, RINCON'S CONSTITUTIONAL CHAMBER COULD DECIDE ON THE INTERNAL PROCEDURES FOR VOTES AND RECUSALS. IN SHORT, A PRO-REFERENDUM DECISION FROM THE COURT IS UNLIKELY.

SHAPIRO

NNNN

2004CARACA01080 - CONFIDENTIAL